

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653-KRH  
. .  
. U.S. Courthouse  
. 701 East Broad Street  
CIRCUIT CITY STORES, INC., . Richmond, VA 23219-1888  
. .  
Debtor. . February 11, 2010  
. . 11:02 a.m.  
. . . . .

TRANSCRIPT OF HEARING  
BEFORE HONORABLE KEVIN R. HUENNEKENS  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: McGuireWoods, LLP  
By: DOUGLAS M. FOLEY, ESQ.  
9000 World Trade Center  
101 West Main Street  
Norfolk, VA 23510

For Lawrence Fay: Christian & Barton, LLP  
By: MICHAEL D. MUELLER, ESQ.  
Mutual Building, Suite 1200  
909 East Main Street  
Richmond, VA 23219-3095

For Kelly  
Breitenbecher: Sands Anderson, Marks & Miller PC  
By: WILLIAM GRAY, ESQ.  
801 East Main Street, Suite 1800  
Richmond, VA 23218

For Active Media: Paul, Hastings, Janofsky & Walker, LLP  
By: HARVEY A. STRICKON, ESQ.  
75 East 55th Street  
New York, NY 10022

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1 COURTROOM DEPUTY: All rise. The United States  
2 Bankruptcy Court for the Eastern District of Virginia is now in  
3 session, the Honorable Kevin R. Huennekens presiding. Please  
4 be seated and come to order.

5 COURT CLERK: In the matter of Circuit City Stores,  
6 Incorporated, hearing on Items 1 through 16 as set out on  
7 debtors' agenda.

8 MR. FOLEY: Good morning, Your Honor, Doug Foley on  
9 behalf of the debtors.

10 THE COURT: Good morning, Mr. Foley.

11 MR. FOLEY: With me today in court is Michelle  
12 Mosier, who is the principal financial officer of the debtor.  
13 Your Honor, there are 16 items on the agenda this morning.  
14 We'll just go through them in order for now. Several of them  
15 were asking to be adjourned. First item, Your Honor, is the  
16 motion for relief from the automatic stay by United Radio. We  
17 have submitted an order resolving that motion in its entirety.  
18 So, as soon as Your Honor considers that, it can be removed  
19 from the docket.

20 THE COURT: All right, very good.

21 MR. FOLEY: Your Honor, Item Number 2, which is again  
22 our long-standing motion to deal with sell down procedures and  
23 claims trading, we've been tracking that with the confirmation  
24 hearing, which is Item Number 12 on the agenda. And as Your  
25 Honor sees from the agenda, we're proposing that the

1 confirmation hearing be adjourned for the time being until  
2 March 8th at 11. And so, we would ask that Item Number 2 also  
3 track that and be adjourned until March 8th at 11:00 a.m.

4 THE COURT: All right. So, Item 2 will be moved to  
5 the 8th of March.

6 MR. FOLEY: Thank you, Your Honor. Item Number 3 is  
7 our objection to Panasonic's claim. We're still working with  
8 Panasonic about a potential resolution to that claim. They've  
9 asked us and we've agreed to continue our objection until the  
10 March 8th hearing date at 11.

11 THE COURT: All right, that will be moved to March  
12 8th.

13 MR. FOLEY: Your Honor, Items Number 4 and 6, these  
14 are the motions by Madcow. The first one is an administrative  
15 claim alleging administrative status for goods allegedly  
16 delivered post-petition, which is differentiated from Item  
17 Number 6, which is their 503(b)(9) motion and claim. We're  
18 working with Madcow to see if we can't reach a consensual  
19 resolution with them. But, I believe last time we were here,  
20 Your Honor, there was some confusion as to whether these were  
21 duplicative entries, but they're not. They're different  
22 motions for different claims. So, we would ask the Court to  
23 adjourn those until the February 24th hearing date at 11.

24 THE COURT: February 24?

25 MR. FOLEY: Yes.

1 THE COURT: Okay, that will be --

2 MR. FOLEY: That's -- I think that's a two o'clock  
3 hearing, Your Honor.

4 THE COURT: All right, that will be -- yes, it is at  
5 two o'clock. So, that will be February 24 at two o'clock.

6 MR. FOLEY: Thank you, Your Honor. Item Number 5,  
7 this is the motion by Ryan and Company to compel assumption of  
8 their contract. It is related now to Item Number 15, which is  
9 our eighth omnibus motion to reject executory contracts. We  
10 have moved now to reject it. They have a corollary motion now  
11 to compel assumption. We've agreed for the time being to -- as  
12 to their motion and as to their contract, Item Number 15, to  
13 adjourn it until the March 8th hearing date at 11.

14 Just so that the Court has some background as to what  
15 the issue is here, this is -- they're a tax consulting service  
16 that has to do with a -- certain taxes that we paid to import  
17 product into the State of Hawaii and the proper assessment --  
18 proper cost value assessment associated with that. We are a  
19 participant with many other companies in an appeal to the  
20 Hawaii Supreme Court over what the right methodology is. Ryan  
21 is a consulting advisor. All of the work that they did was  
22 done pre-bankruptcy. We've just been waiting for a court  
23 ruling at this point. Their contract is contingency fee based.  
24 We believe that if we are completely successful with the  
25 appeal, we'll receive approximately \$800,000 of refunds and

1 they would claim a third of that under their contract.

2           The issue obviously is, you know, if we reject the  
3 contract does that just become a general unsecured claim versus  
4 an administrative claim. So, we're working through that. They  
5 obviously want us to assume the contract. At this point, all  
6 the work was done pre-petition. We don't see any benefit to  
7 it. We may not or the liquidating trustee may not want to hire  
8 them, depending on what the outcome of the Supreme Court ruling  
9 is, for any services that maybe needed after a remand. So,  
10 we'll try to work through that issue, Your Honor, but at some  
11 point it will be resolved. And they have agreed -- this  
12 adjournment is without prejudice to the date of rejection being  
13 the date we filed the motion to the extent that's the outcome  
14 of the Court's ruling.

15           THE COURT: Is this a contract that was governed by  
16 Hawaii law or a contract that's governed by the law of another  
17 state?

18           MR. FOLEY: No, I believe it's a contract governed by  
19 Virginia law, but I am not certain of that. This is -- Ryan  
20 Consulting is a national consulting firm and they went -- I  
21 believe they basically recruited companies to participate in  
22 this appeal --

23           THE COURT: All right.

24           MR. FOLEY: -- in this tax appeal because there are a  
25 lot of similarly situated companies and we also --

1 THE COURT: They're not attorneys then I take it.

2 MR. FOLEY: Well, that's another question, Your  
3 Honor. They were listed as an OCP, ordinary course  
4 professional, in our initial motion, but they never filed an  
5 OCP affidavit because they weren't doing any work post-  
6 petition. So, the question of whether or not they were a  
7 professional or not is another question that has to be folded  
8 into this as to whether or not we can be forced to assume their  
9 contract --

10 THE COURT: I understand.

11 MR. FOLEY: -- to the extent it's for professional  
12 services. But, we're working through that with them and see if  
13 we can't somehow reach a consensual resolution. Item Number 7,  
14 Your Honor, this is our motion to set a second administrative  
15 claims bar date. As Your Honor is aware, we set an original  
16 administrative claims bar date that ran from the petition date  
17 through April 30th of 2009 with the understanding that we were  
18 hopeful to get to confirmation a lot sooner than we obviously  
19 have. That bar date was June 30th and covered that period.  
20 The bar date that we're seeking to establish now would pick up  
21 the time period from May 1st, 2009 through December 31, 2009.  
22 And the proposed order that we have on the motion, Your Honor,  
23 has to same carve outs with respect to the first administrative  
24 claim bar date. Anybody who has filed a claim or has a claim  
25 already does -- obviously does not have to file anything again.

1           The relief that we're seeking does not reopen any  
2 past bar dates, including the 503(b)(9) bar date, and the  
3 proposed procedures to mail the order that would be entered by  
4 Your Honor establishing this bar date within seven days of when  
5 it's entered and establish a bar date of March 31st, 2010 for  
6 any party that thinks they have an administrative claim to file  
7 a claim that accrued between May 1st, 2009 and December 31,  
8 2009 by March 31, 2010. The United States of America objected  
9 again, Mr. Stein, for the same reasons that he did last time.  
10 It was oversight on our part not to account for that before we  
11 filed this motion, but we have subsequently reached a similar  
12 stipulation with him and have submitted that to chambers for  
13 consideration. So, I believe that objection has been resolved  
14 and there has been no other objections to the motion. We would  
15 ask the Court to approve it.

16           THE COURT: Does any party wish to be heard in  
17 connection with the debtors' motion setting a second  
18 administrative bar date?

19                           (No verbal response)

20           THE COURT: All right, that motion will be granted.

21           MR. FOLEY: Thank you, Your Honor. The next  
22 substantive motion we'd like to address is our motion to  
23 establish a retention program for the remaining wind down team  
24 to cover the time period from the expiration of the last one  
25 that the Court has already approved through the effective date

1 of confirmation of the plan. We did file two procedural  
2 motions to have this heard today. That's Items Number 7 and  
3 Items Number 9. That's actually -- no, Items Number 8 and  
4 Items Number 10 on the docket, Your Honor. Item Number 9 is  
5 the motion itself.

6 THE COURT: Right.

7 MR. FOLEY: This is our motion to shorten the notice  
8 period so that we could hear the matter today as well as our  
9 motion to seal the exhibit that has the actual dollar amounts  
10 for each of the individuals. We haven't received any  
11 objections to either of those procedural motions and would ask  
12 the Court to grant those before I address the Court with  
13 respect to the merits of the matter.

14 THE COURT: Does any party wish to be heard in  
15 connection with the debtors' motion for an order shortening the  
16 notice period in connection with this motion?

17 (No verbal response)

18 THE COURT: All right. There being no objection to  
19 that motion, the motion is granted and the short notice period  
20 is approved.

21 MR. FOLEY: Thank you, Your Honor.

22 THE COURT: Does any party wish to be heard in  
23 connection with the debtors' motion to seal the exhibit to the  
24 debtors' motion for the order?

25 (No verbal response)



1 THE COURT: All right, that motion will be granted as  
2 well and the exhibit will be received under seal.

3 MR. FOLEY: Thank you, Your Honor. Item Number 9,  
4 this is the actual motion to approve the retention plan. This  
5 applies to 20 of the 23 remaining employees that are part of  
6 the wind down team. All of the participants in this plan were  
7 participants in the Tier 2 level of the previous plan, so  
8 they're non-management employees. Your Honor, as the motion  
9 states, the weekly aggregate accrual for this program is  
10 approximately \$9,400. And the way it works, the end date for  
11 any individual employee is the date that they are severed by  
12 the company or the effective date of a plan of liquidation.  
13 And if they resign and take other employment at any time or if  
14 they are terminated for cause, they will receive nothing.

15 So, this program is designed to obviously keep them  
16 here. It doesn't guarantee that they will stay with us. We  
17 expect probably -- we expect in fact some attrition, but this  
18 effort was to try to stem that attrition because the previous  
19 plan has expired. The confirmation is likely to get delayed  
20 for the various reasons that you've heard at the previous  
21 hearings relating to the tax issues. And we wanted to provide  
22 something for these people so that they have less uncertainty  
23 given the tenure of their employment is questionable.

24 Ms. Mosier is here and I would proffer her testimony  
25 that in developing this program, she looked at the likelihood

1 of potential attrition and the need to keep these particular  
2 employees incented to stay and be retained by the company and  
3 continue their work on the wind down effort, and that it is a  
4 sound exercise of the debtors' business judgment under  
5 503(c)(3) and is justified under the facts and circumstances,  
6 and that without this program there's a significant risk that  
7 we could lose a lot more people than we otherwise would.

8           So, we would ask -- and the committee has reviewed  
9 the list as well and they have no objection and in fact support  
10 the motion and the plan. We have also previewed the  
11 compensation proposed with the proposed liquidating trustee  
12 under the plan, and he also has no concern or issue with the  
13 amounts that we're proposing to pay these individuals. So, we  
14 would ask the Court to approve the retention plan.

15           THE COURT: Does any party wish to be heard in  
16 connection with the debtors' motion to approve the retention  
17 plan?

18                           (No verbal response)

19           THE COURT: Do you want to offer the exhibit that you  
20 want placed under seal?

21           MR. FOLEY: Yes, Your Honor, if we could do that. I  
22 know chambers I believe has a copy and we've provided copies to  
23 the Office of the United States Trustee and the creditors'  
24 committee.

25           THE COURT: All right. This will be marked as the

1 Debtors' Exhibit Number 1 and will be placed under seal.

2 MR. FOLEY: Thank you, Your Honor. And then, other  
3 than Ms. Mosier's proffered testimony, we would have no other  
4 evidence.

5 THE COURT: Does any party wish to examine the  
6 proffered witness?

7 (No verbal response)

8 THE COURT: All right. Does any party object to the  
9 debtors' motion?

10 (No verbal response)

11 THE COURT: All right. There being no objection, the  
12 Court has reviewed this motion and I find it to be reasonable  
13 as well -- a reasonable exercise of the debtors' business  
14 judgment and the Court will approve the motion.

15 MR. FOLEY: Thank you, Your Honor. That brings us to  
16 items Number 12, 13 and 14. This is the plan confirmation as  
17 well as the motions by Pioneer and Samsung under Rule 3020 for  
18 confirmation deposits. As Your Honor is aware, at this point  
19 we are adjourning -- requesting adjournment of the confirmation  
20 hearing until March 8th at 11. In all likelihood, it will be  
21 adjourned further, but the confirmation deposit motions  
22 obviously relate to that and will be placed on the next agenda  
23 prior to the confirmation hearing so that to the extent they  
24 need to be heard, they can be heard before the Court considers  
25 confirmation.

1 THE COURT: All right.

2 MR. FOLEY: Your Honor, that brings us to Item Number  
3 15 on the docket, which is our eighth omnibus motion to reject  
4 certain executory contracts. This motion, Your Honor, was  
5 being filed -- was filed in an abundance of caution to make  
6 sure that there -- these contracts are no longer alive with  
7 respect to these particular former employees and employees for  
8 purposes of 365. This was prompted by a need to reject Mr.  
9 Marcum's contract. As Your Honor is aware, he converted to a  
10 consulting arrangement on January 15th, and as part of that  
11 process the committee has requested and we agreed to reject his  
12 contract to clear up any uncertainty with respect to that  
13 issue.

14 So, in doing so, we reviewed all of the remaining  
15 unrejected employment contracts and had placed those in this  
16 motion, including Ms. Mosier's, who is sitting in the court  
17 room today. And we did receive some objections, Your Honor,  
18 and -- but with respect to the motion, we would certainly  
19 proffer the testimony that -- of Ms. Mosier that would be  
20 consistent with Paragraph 15 of the motion that the debtors  
21 have determined in their business judgment in light of the  
22 liquidation and the termination of the majority of the debtors'  
23 employees, including the vast majority of the parties who are  
24 subject to these contracts, that assumption of the contracts is  
25 certainly not warranted and that we have determined that it's

1 in the best interest of the estate that these contracts have no  
2 further value to the estate and they ought to be rejected.

3           The parties that objected, Your Honor, raised several  
4 issues, mostly relating to whether or not they have claims and  
5 what the status of those claims might be. The proposed order  
6 that we have submitted, Your Honor, has Paragraph 4 in it which  
7 provides that to the extent any contract listed was terminated  
8 prior to or after the petition date as a result of a breach by  
9 the contract counter-party or otherwise did not become  
10 effective at any time or is not executory as of the date  
11 hereof, this order shall be of no force and effect with respect  
12 to any and all such contracts, and nothing herein shall be  
13 deemed to or shall reinstate or otherwise alter the status of  
14 any contract. All the debtors' rights with respect to the  
15 foregoing are not waived and are expressly reserved.

16           The parties that filed objections, Your Honor,  
17 including Mr. Besanko, who was former CFO of the company, have  
18 been filed and in fact objections have been made to those  
19 claims. And the claims whether or not they're entitled to  
20 administrative status or general unsecured status and for what  
21 reason is not being affected by this motion at all. This is  
22 again just a motion. To the extent these contracts are  
23 executory, the debtors' estates have determined that it is  
24 warranted to reject them, and we would ask the Court to approve  
25 the motion.

1 THE COURT: All right. Does any party wish to be  
2 heard in connection with the debtor's motion?

3 MR. MUELLER: Good morning, Your Honor, Michael  
4 Mueller with the law firm of Christian and Barton on behalf of  
5 Lawrence Fay. I apologize, Your Honor. I'm having some back  
6 problems this morning, so if the Court will indulge me for my  
7 lack of eye contact with Your Honor. Your Honor, we filed our  
8 response on behalf of Mr. Fay out of an abundance of caution.  
9 As Mr. Foley acknowledges, Paragraph 4 of the order states that  
10 to the extent any contract -- and I'm paraphrasing or omitting  
11 some of it -- is not executory as of the date hereof, the order  
12 shall have no force and effect with respect to any and all such  
13 contracts and nothing herein shall be deemed or shall reinstate  
14 or otherwise alter the status of any contract.

15 The next sentence of the order, Paragraph 4 states,  
16 all of the debtors' rights with respect to the foregoing are  
17 not waived and are expressly reserved. We believe in -- I  
18 didn't have an opportunity to discuss this with Mr. Foley, so I  
19 do not intend to imply that he's not agreeable to this. But,  
20 we believe that the order should further state that all of the  
21 debtors' and counter-parties' rights with respect to the  
22 foregoing are not waived and are expressly reserved. In  
23 addition, the motion, Your Honor, at Footnote 2 states that,  
24 certain of the contracts listed on Exhibit A and included in  
25 this motion may have been terminated prior to the petition

1 date. And if you drop further down again -- I'm paraphrasing  
2 -- or may not be executory as of the date hereof. To the  
3 extent any of the foregoing applies, this motion has no force  
4 or effect with respect to any such terminated noneffective or  
5 nonexecutory contracts.

6 The concern I have is Paragraph Number 1 of the order  
7 states that the motion is granted. So, as long as we can agree  
8 that parties' rights to assert that the contract is no longer  
9 executory as of the date of the filing of this motion, for  
10 example, Mr. Fay's contract was terminated based on his  
11 termination on March 29th, 2009. And there is case law that  
12 would support the position, including Gloria Manufacturing,  
13 that at that point the contract was no longer executory and  
14 cannot be assumed or rejected. Your Honor, consistent with my  
15 ethical obligations to the Court, I do acknowledge Dornier  
16 Aviation, which was decided by Judge Mitchell in the Eastern  
17 District of Virginia and --

18 THE COURT: I was going to ask you about that.

19 MR. MUELLER: Pardon?

20 THE COURT: I was going to ask you about that.

21 MR. MUELLER: Yes, sir, and I'm well aware of it.

22 Your Honor, he states in that case that the determination --  
23 the time for determining whether or not a contract is executory  
24 is the date of the filing of the petition, but he doesn't cite  
25 any authority and he doesn't discuss Gloria Manufacturing,

1 which is a Fourth Circuit decision which seems to suggest  
2 otherwise. And there are other decisions cited in our  
3 pleadings, namely Spectrum Information Technologies and In Re  
4 Wang, which suggests that you look at it at the time of the  
5 filing of the motion in the event that something has happened  
6 subsequent to the filing of the petition that makes the  
7 contract no longer executory. As long as we can preserve our  
8 rights to argue that for another day, I have no problem with  
9 this order being entered subject to some tweaks or  
10 modifications to the order, such as preserving the rights of  
11 the counter-parties to the contract.

12 THE COURT: All right. Anything further?

13 MR. MUELLER: Well, if Your Honor is inclined to rule  
14 on whether or not the contracts are executory and can be  
15 rejected, I'd like to belabor the issue with the Court if I  
16 may.

17 THE COURT: Well, let's resolve the first issue  
18 first, and then if we're going to get to that then I'll  
19 certainly let you address it. But, let me hear from all the  
20 other parties and then I'll make my ruling.

21 MR. MUELLER: Yes, sir, Your Honor.

22 THE COURT: Thank you, Mr. Mueller.

23 MR. MUELLER: Thank you.

24 THE COURT: Mr. Gray?

25 MR. GRAY: Yes, good morning, Your Honor, William



1 Gray for Kelly Breitenbecher. She was a senior VP at Circuit  
2 City. Our arguments are basically the same as Mr. Mueller just  
3 now cited. Our concern was suddenly we've got two objections  
4 to claims pending regarding Mr. Breitenbecher's claims that are  
5 directly related to the employment agreement here that is being  
6 -- attempting to be rejected. I do agree that it's not  
7 executory and it can't be therefore rejected. I mirror what  
8 Mr. Mueller was saying about changing the order -- the proposed  
9 order to add any counter-parties.

10 The concern too, as he's mentioned, Paragraph 2 of  
11 the proposed order just does say flat out the contracts here  
12 are rejected. To me, that needs to be modified just a little  
13 bit if the issue on the rejection should be preserved, which I  
14 think it appears the debtor is saying anyway with Paragraph 4  
15 that these issues on whether it's rejected or not or terminated  
16 several other types of situations are basically being reserved.  
17 So, I would like to just tighten up the order in that regard.  
18 And, finally, Mr. Foley did say that this order wouldn't affect  
19 the objections to claims or the claims that have been filed.  
20 Perhaps we insert a paragraph or something to that regard in  
21 this proposed order or the order that would be entered.

22 THE COURT: Well, aren't we really -- the concern  
23 that you and Mr. Mueller both have concerning what are the  
24 damages or the least rejection damages or whatever if it's -- I  
25 mean, to the extent that you reject a contract, you know, under

1 the law, rejection is just a breach. It is nothing more than  
2 that. So, we've got -- you know, but it's so -- getting around  
3 the metaphysical aspects of whether we've got a contract  
4 rejection or what this animal is, because if it's not an  
5 executory contract is it just a debtor/creditor relationship?  
6 And does that mean it's post-petition, pre-petition, what does  
7 it mean? Those are all issues that you want to be able to  
8 preserve and argue about.

9 MR. GRAY: Correct.

10 THE COURT: And I understand that issue. And tell me  
11 why Paragraph 4 doesn't adequately preserve your remedy,  
12 because the way that I read this, I read Footnote 2 of the  
13 motion to carve out your contract to the extent that you were  
14 arguing that it was no longer executory to the extent that that  
15 makes any difference. And then, Paragraph 4 in the order  
16 seemed then to say that, you know, all of those kinds of  
17 arguments that you have are preserved for the record and, you  
18 know, are -- don't go away as a result of this motion.

19 So, getting back to Mr. Mueller's point where he  
20 said, well, Paragraph 1 says the motion is granted, the motion  
21 is granted by the motion is only to do it to the extent it  
22 doesn't -- you know, that they're not executory. And then,  
23 Paragraph 4 preserves the rights. So, what else -- why do we  
24 need other language? Haven't we covered this adequately?

25 MR. GRAY: Perhaps it's belts and suspenders. I

1 think the second sentence of Paragraph 4 is what caught my eye  
2 mostly, which as proposed it's just the debtors' rights with  
3 respect to the foregoing are not waived and expressly reserved.

4 THE COURT: Yes, but that's because of the first  
5 sentence, which goes on for about ten lines, it preserves your  
6 rights.

7 MR. GRAY: And, Your Honor, certainly hearing your  
8 understanding of the order, that provides more comfort to me,  
9 too. I think just the interlineation as Mr. Mueller suggested  
10 in the second paragraph to make it the debtors and the  
11 counter-parties, it just actually makes it crystal clear I  
12 guess.

13 THE COURT: All right. Anything further, Mr. Gray?

14 MR. GRAY: No, Your Honor, thank you.

15 THE COURT: All right, thank you. Does any other  
16 party wish to be heard in connection with the motion? All  
17 right, Mr. Foley. Well, I think Paragraph 4 is perfectly clear  
18 and I understand exactly what you were -- not what you were  
19 saying, what you are saying in Paragraph 4. Do you have  
20 objection to inserting all the debtors' and counter-parties'  
21 rights with respect to the foregoing are not waived or  
22 expressly reserved?

23 MR. FOLEY: My only concern about that, Your Honor,  
24 is if these contracts are executory, we want the relief that  
25 we're seeking, which is a third rejected. And so, this says if

1 it's not executory, the order has no force and effect. And  
2 Paragraph 2 of the order preserves their right to file claims.  
3 All of these parties have already filed claims, some of which  
4 are already under objection. So, their claims are not being  
5 affected in any way by this order. If the contract is not  
6 executory, this motion is not -- and order is not affecting  
7 their rights in any way. I agree the reason the sentence is in  
8 there, Your Honor, is to preserve the debtors' rights because  
9 the previous ten lines preserve the counter parties' rights and  
10 doesn't change anything.

11 If it's not an executory contract, then they're not  
12 affected by this order, period. But, if it is an executory  
13 contract, we do want the relief is that it is rejected.  
14 Whatever that means, it doesn't affect their claims. It  
15 doesn't determine their claims. If we put in an additional  
16 sentence that says, all of the debtors' rights and the counter  
17 parties with respect to the foregoing, if that refers to the  
18 contract and the contract turns out to have been executory,  
19 then we basically carved out the relief that we're trying to  
20 get.

21 THE COURT: All right, very good. I understand your  
22 position. All right. Mr. Mueller, do you wish to be heard  
23 further on this?

24 MR. MUELLER: Your Honor, so long -- let me get to  
25 the podium. So long as you're not making a determination today

1 as to whether or not these contracts, Mr. Fay and Mr. Gray's  
2 clients' contracts are executory, I have nothing further, Your  
3 Honor.

4 THE COURT: All right, thank you, Mr. Mueller.

5 MR. MUELLER: Thank you.

6 THE COURT: Any other party wish to be heard on this?

7 (No verbal response)

8 THE COURT: All right. I'm going to grant the  
9 debtors' motion. I think that the Paragraph 4 of the order is  
10 very clear. I'm not making any ruling today with regard to  
11 whether these are executory contracts or not executory  
12 contracts. Those issues are preserved for another day.

13 MR. FOLEY: Thank you, Your Honor. One item I  
14 skipped on the agenda -- did not intend to do so -- was Item  
15 Number 11, which is the remainder of the initial incentive plan  
16 program that we -- that Your Honor approved I believe last  
17 February with everyone except for Mr. Marcum. As Your Honor is  
18 aware, last time we were here, we intended to go forward today  
19 with respect to Mr. Marcum's bonus under that program, but we  
20 are still working with the committee to try to reach a  
21 consensual resolution of that. It is tied up with some other  
22 issues relating to the composition of the wind down team going  
23 forward through confirmation, and there maybe a need to take  
24 some discovery with respect to Mr. Marcum's piece of this  
25 program.

1           If there is and there are any discovery disputes with  
2 respect to that, there maybe a need for us to get some court  
3 time with respect to resolving those discovery disputes. But,  
4 in the meantime, we are again trying to work consensually to  
5 resolve this issue with Mr. Marcum with the committee and we  
6 have agreed to adjourn the motion until the February 24th  
7 hearing date at two o'clock to go forward on the merits on that  
8 day if we have not consensually -- we either will present a  
9 consensual resolution on that day or we will go forward on that  
10 day.

11           THE COURT: Okay. And then, if you have any of these  
12 discovery matters, you'll take those up between now and then.

13           MR. FOLEY: Yes, Your Honor.

14           THE COURT: All right, very good.

15           MR. FOLEY: Your Honor, that leaves Item Number 16,  
16 which is the Active Media adversary proceeding. We've -- Mr.  
17 Strickon, counsel for the defendant, is on the phone and we  
18 have -- we propose to have the Court enter its typical pretrial  
19 order with respect to that. A couple caveats to that, Your  
20 Honor, is that given the complexity of this particular  
21 adversary proceeding, we would anticipate that a trial of the  
22 matter would take a day and a half to two days. Also, to  
23 accommodate Mr. Strickon's schedule with respect to Rule  
24 7026(a)(1) disclosures, we have agreed that he should be  
25 permitted -- both parties should be permitted 21 days from

1 entering of the pretrial order to make their Rule 7026(a)(1)  
2 disclosures. Other than that, Your Honor, we are fine with the  
3 Court's normal pretrial order and we would just need to pick  
4 dates from the Court for the trial.

5 THE COURT: All right.

6 MR. FOLEY: Mr. Strickon is on the phone and --

7 MR. STRICKON: Yes, that's correct, Your Honor.

8 THE COURT: All right, very good. What -- so, we  
9 need to find two days. How much discovery needs to be done in  
10 this case?

11 MR. FOLEY: It's probably going to be pretty document  
12 intensive given the nature of the claims back and forth. The  
13 normal time period I believe is 90 days. Is that correct, Your  
14 Honor?

15 THE COURT: Well, I was going to be suggesting a  
16 trial date in September. Does that give you enough time?

17 MR. FOLEY: That's plenty of time, Your Honor.

18 THE COURT: All right.

19 MR. STRICKON: That would be fine, Your Honor.

20 THE COURT: All right. I could do September 13 and  
21 14.

22 MR. STRICKON: Okay. Let me just check. One second,  
23 Your Honor. That would be fine.

24 THE COURT: All right, thank you, Mr. Strickon.

25 MR. STRICKON: That would be fine, Your Honor.

1 THE COURT: All right, thank you.

2 MR. FOLEY: That's fine with the debtors, Your Honor.

3 THE COURT: All right, very good. So, we'll -- I'm  
4 going to reserve both days, so we'll have the two days if we  
5 need them for the trial.

6 MR. FOLEY: Okay.

7 THE COURT: And then, the Court will issue its  
8 standard pretrial order accepting the 7026(a) disclosures.

9 MR. FOLEY: Thank you, Your Honor. I believe that  
10 concludes the items on the agenda, Your Honor, this morning and  
11 we don't --

12 THE COURT: All right. Does any other party have any  
13 other business in connection with Circuit City?

14 (No verbal response)

15 THE COURT: All right. Thank you, Mr. Foley.

16 MR. FOLEY: Thank you, Your Honor.

17 MR. STRICKON: Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Strickon.

19 THE COURT DEPUTY: All rise.

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C E R T I F I C A T I O N

I, CARLA M. OAKLEY, court approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter, and to the best of my ability.

/s/ Carla M. Oakley

CARLA M. OAKLEY

J&J COURT TRANSCRIBERS, INC.

DATE: February 24, 2010

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